TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

No. 250. 36.

THE WABASH RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

PETER TOURVILLE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED APRIL 4, 1889.

(17,350.)

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the supreme court of the State of Missouri, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, at the October term, 1898, thereof, between Peter Tourville, respondent, and Wabash Railroad Company, appellant, a manifest error hath happened, to the great damage of the said Wabash Railroad Company, appellant as aforesaid, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., not exceeding thirty days from and after the — citation in this cause bears date, in the said Supreme Court of the United States, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal of the United States Circuit Court for the Western District of Missouri, Central Division.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Issued at office, in the city of Jefferson, with the seal of the circuit court of the United States for the western district of Missouri, central division, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri, Central Division.

Allowed by—
JAS. B. GANTT,
Chief Justice, Supreme Court of Missouri.

[Endorsed:] No. 7985 United States circuit court, western district of Missouri, central division. Peter Tourville, resp., *vs.* Wabash Railroad Co., app'l't. Writ of error to the supreme court of the State of Missouri. Returned and filed 14th day of March, 1899. Jno. R. Green, clerk.

Return to Writ.

UNITED STATES OF AMERICA, }
State of Missouri, } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified

transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Seal of the Supreme Court of Missouri.

In witness whereof I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 20th day of March, A. D. 1899.

JNO. R. GREEN, *Clerk.*

2 The United States of America to Peter Tourville, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, D. C., not exceeding thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the central division of the western district of Missouri, wherein Wabash Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James B. Gantt, chief justice of the supreme court of the State of Missouri, this 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

JAS. B. GANTT,
Chief Justice.

[Endorsed:] Supreme court of Missouri. Peter Tourville, d'f't in error, *vs.* Wabash Railroad Co., pl'ff in error. Citation. Filed March 14th, 1899. Jno. R. Green, clerk.

UNITED STATES OF AMERICA,
Central Division of the Western District of Missouri, } *ss:*

I hereby acknowledge due service of the within citation this 15th day of March, A. D. 1899.

VIRGIL RULE,
Attorney for Defendant in Error.

3 STATE OF MISSOURI, *sct:*

In the Supreme Court of Missouri.

Be it remembered that heretofore, to wit, on the 1st day of January, 1896, there was filed in the office of the clerk of the supreme court of the State of Missouri a certified copy of the judgment and order granting an appeal in the case of Peter Tourville, respondent, against The Wabash Railroad Company, appellant, from the circuit court of the city of St. Louis; which said certified copy is in words and figures as follows, to wit:

STATE OF MISSOURI,
City of St. Louis, } *ss:*

Be it remembered that at the April term, A. D. 1895, of the circuit court, city of St. Louis, within and for the city and State afore-

said, and on the third day of May, A. D. 1895, it being the 23rd day of the said April term, 1895, of the said court, the following proceedings were had in a certain cause then pending in said court, wherein Peter Tourville is plaintiff and The Wabash Railroad Company is defendant, to wit:

FRIDAY, *May 3rd*, 1895.

PETER TOURVILLE
vs.
WABASH RAILROAD CO. } (85743.)

Now, at this day, come said parties, by their respective attorneys; thereupon plaintiff presents to the court the mandate of the St. Louis court of appeals, and moves for judgment in accordance with the same, which is by the court sustained.

It is therefore considered and adjudged by the court that plaintiff have and recover of defendant and W. Nichols and J. H. Maxon, the securities on the appeal bond herein, the sum of eighty-one dollars and his costs and charges in this behalf expended, and have therefor execution.

4 And afterwards, at the December term, 1895, of the said court, the following further proceedings were had in said cause, to wit:

SATURDAY, *December 7th*, 1895.

PETER TOURVILLE
vs.
WABASH RAILROAD CO. } (85743.)

Now, at this day, comes defendant, by attorney, and files an affidavit for appeal, and on its motion an appeal is allowed it to the supreme court of the State of Missouri from the judgment herein, and thirty days' time is given it to file a bill of exceptions herein.

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

I, Thomas B. Rodgers, clerk of the circuit court, city of St. Louis, within and for the city and State aforesaid, do hereby certify that the above and foregoing contains a true, full, and complete transcript of the judgment in the above-entitled cause, and showing the term and day of the term, month, and year in which the same was rendered, as also of the order granting an appeal in the said cause, as fully as the same remain of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 30th day of December, A. D. 1895.

THOS. B. RODGERS,
Clerk Circuit Court.

And afterwards, to wit, on the 8th day of January, the appellant in said cause filed its abstract of the record under rule 11 of this court; which said abstract is in words and figures as follows, viz:

5 In the Supreme Court of Missouri, April Term, A. D. 1896.

PETER TOURVILLE, Respondent,
vs.
WABASH RAILROAD COMPANY, Appellant.

Appeal from the circuit court of the city of St. Louis, Missouri, Hon. James E. Withrow, circuit judge.

Abstract.

This is an action to recover eighty-one dollars ($81) alleged to be due the plaintiff from defendant as wages, and the question in issue here is whether the defendant should pay that amount once or twice.

The defendant's contention is that the amount due from it to the plaintiff has already been sequestered by a judgment against it as garnishee in a court of competent jurisdiction in the State of Illinois, and that the learned circuit judge below refused to give full faith and credit to that judgment, as required by the Constitution of the United States.

The proceedings are as follows:

On the 12th day of March, 1887, at Belleville, in the State of Illinois, the plaintiff Tourville executed a promissory note for the sum of one hundred dollars in favor of Alexander Flannigan, a lawyer, then, as now, living in East St. Louis, in that State (defendant's original bill of exceptions, page 6).

On the 27th day of June, 1887, a payment of fifteen dollars was made on said note (defendant's original bill of exceptions, page 6).

On the 3rd day of June, 1891, said Flannigan brought suit upon said note, amounting then to $132, by attachment against Tourville, alleging that said Tourville then resided in the city of St. Louis, Missouri, and caused the defendant to be summoned as garnishee (defendant's original bill of exceptions, pages 5, 6, 7, and 8).

6 Said cause was set for trial July 13th, 1891, before James H. Wyatt, a justice of the peace, in the city of East St. Louis, Illinois (defendant's original bill of exceptions, page 9).

At that time the defendant was a consolidated railway corporation, duly and separately organized under the laws of Illinois and Missouri, and having a resident agent in East St. Louis (defendant's original bill of exceptions, page 2).

Plaintiff was then in defendant's employ in Missouri and residing there with his family, and his wages for May and June, 1891, amounted to $81.98, and are not subject to attachment, execution, or garnishment under the laws of the State of Missouri (defendant's original bill of exceptions, pages 2, 3, and 14).

The plaintiff Tourville and his attorney, Virgil Rule, Esq., were each orally notified by defendant prior to the trial and in time for a defense to be interposed of the pendency of the suit in East. St. Louis (defendant's original bill of exceptions, pages 2 and 3).

On the 10th of June, 1891, the plaintiff Tourville commenced a

suit against the defendant for the entire amount of wages due him ($81) before James McCaffery, justice of the peace, in the city of St. Louis, Missouri (defendant's original bill of exceptions, page 1).

On the 22d day of June, 1891, the plaintiff Tourville obtained a judgment by default against the defendant in said cause for the sum of $75, and thereafter defendant duly perfected its appeal to the circuit court of the city of St. Louis, Missouri; that on the 13th day of July, 1891, said Flannigan obtained a judgment by default against Tourville for the sum of $132, in East St. Louis, Illinois, on the note above described (defendant's original bill of exceptions, page 10).

On the 23rd day of July, 1891, the defendant here and garnishee in East St. Louis, as required by the laws of Illinois, filed its
7 answer there, stating that the sum of $71.83 was due to Tourville for wages while in its employ in May, 1891, and also pleading and claiming for him the exemptions given to heads of families by the laws of Illinois as well as Missouri, and also pleading that Tourville had recovered final judgment against defendant for said wages in the courts of Missouri, and also that said wages were earned in the State of Missouri under a contract made in said State, under which said contract said wages were payable in the city of St. Louis, Missouri, and nowhere else, and also *but* said Tourville was the head of a family, residing with the same in the State of Missouri, and had no property except his wearing apparel, and claiming said sum as exempt under the laws of Missouri (defendant's original bill of exceptions, pages 12, 13, and 14).

On the 25th day of July, 1891, said cause coming on for trial, defendant proved the facts pleaded in the answer above referred to; but, notwithstanding these facts, a judgment was rendered by James H. Wyatt, justice of the peace, in East St. Louis, against the defendant as a garnishee, for the sum of $21.83, in the case of Flannigan *vs.* Tourville, from which defendant perfected an appeal to the city court of East St. Louis (defendant's original bill of exceptions, page 11).

A short time after this suit had been instituted and before any judgment had been rendered in either cause, either in the city of St. Louis, Missouri, or in the city of East St. Louis, Illinois, the defendant offered to pay to Tourville and his attorney, Virgil Rule, Esq., the balance, when ascertained, due Tourville as wages after the allowance of his exemptions in the garnishment case above described, provided the defendant was released as such garnishee (defendant's original bill of exceptions, page 21). This offer was refused by Tourville and his attorney, each claiming that the full amount of his wages was exempt from execution, and that said wages could not be impounded by the courts of Illinois, and each insisting upon the payment to Tourville by defendant of the full amount of Tourville's wages, notwithstanding the pendency of the garnishment proceedings (defendant's original bill of ex-
8 ceptions, pages 21 and 22). On the 21st day of December, 1891, the garnishment case above described came on for trial in the city court of East St. Louis. The plaintiff did not appear,

but the garnishee, the defendant here, being required by the laws of Illinois so to do, did appear and demanded a jury, who sustained the attachment and found a verdict against Tourville, the plaintiff here, in favor of Flannigan for the sum of $132, and thereupon the court heard the evidence upon the answer of the garnishee, and, notwithstanding the proof of the facts set up in said answer, the court found a verdict against the garnishee in favor of Tourville, for the use of Flannigan, for $21.83, with costs, and that execution issue therefor (defendant's original bill of exceptions, page 16).

On the 6th day of January, 1892, an execution was issued in East St. Louis, in the garnishment case above described, against the defendant for said judgment of $21.83 and costs, amounting in all to the sum of $43.38, which defendant paid (defendant's original bill of exceptions, page 4).

On the 23d day of January, 1892, this cause was submitted to his honor James E. Withrow, circuit judge, sitting as a jury, upon a stipulation containing the facts hereinabove set forth (defendant's original bill of exceptions, page 2).

On the 6th day of April, 1892, said court rendered a judgment in favor of the plaintiff as follows:

Whole amount of wages	$81.98
Less judgment and costs paid by defendant in East St. Louis	43.38
Judgment against defendant	$38.60

(Defendant's original bill of exceptions, page 19.)

From this judgment the plaintiff perfected an appeal (defendant's original bill of exceptions, pages 19 and 23). On the 26th day of March, 1892, the judgment of the said court was reversed in the St. Louis court of appeals, and the following opinion and mandate was filed therein:

9 In the St. Louis Court of Appeals, March Term, A. D. 1895, Tuesday, March 26th, A. D. 1895.

PETER TOURVILLE, Plaintiff in Error and Respondent, *vs.* THE WABASH RAILROAD COMPANY, Defendant in Error and Appellant.	Nos. 5485 and 5764. Error and Appeal from Circuit Court, City of St. Louis.

Opinion of the Court.

The trial court rendered a judgment for plaintiff for $38.60. From this judgment the plaintiff prosecutes his writ of error, claiming that he was entitled to judgment, on the conceded facts, for the entire amount sued for, which was $81. The defendant, on the other hand, appeals from the judgment, claiming that the plaintiff was entitled to judgment only for $21.83, on the conceded facts, and that the court erroneously taxed the costs against the defendant, as

it had tendered that amount to the plaintiff prior to the institution of the suit. It will thus appear that while the parties, instead of prosecuting cross-appeals, bring their grievances to this court in independent proceedings—the one by writ of error and the other by appeal—that the entire controversy arises upon the same record, and that the disposition of the complaints of either party necessarily disposes of the complaints of the other.

Touching the facts of the case there is no controversy whatever, as they appear partly by an agreed statement, partly by documentary evidence, and partly by uncontroverted oral evidence. The judgment of the court, therefore, is a mere conclusion of law. The facts thus appearing are as follows: The defendant is a consolidated corporation, acting under several charters, one of which it obtained in the State of Missouri and another in the State of Illinois. The plaintiff was in the defendant's employ in the State of Missouri and earned wages amounting to $80.98, which the defendant at the time hereinafter stated owed to the plaintiff. The plaintiff
10 sued the defendant for the recovery of these wages before a justice of the peace in the city of St. Louis. That suit was instituted on the 10th day of June, 1891. The defendant not appearing, judgment was rendered against it by default. From this judgment the defendant appealed to the circuit court, where, upon a retrial of the cause, the judgment for $38.60 was rendered in plaintiff's favor, of which now both parties complain.

The defense interposed by the defendant to the recovery consists of the following conceded facts: One Flannigan, a resident of East St. Louis, in the State of Illinois, brought a suit by attachment before a justice of the peace in said city and State against the plaintiff on the 3d of June, 1891, and on the same day served a notice of garnishment on the defendant corporation, incorporated in the State of Illinois. The affidavit for attachment filed in that suit stated that Tourville was a non-resident of the State of Illinois and was a resident of St. Louis, in the State of Missouri. The justice thereupon made an order of publication, returnable on the 13th day of July, 1891, which order was in due form, and upon which the constable made the following return:

"Executed the within notice by posting one notice at the post-office, and one notice at Egler's saloon, and one notice at the justice's office, this 29th day of June, 1891."

Section 53, chapter 11, of the Revised Statutes of Illinois provides, among other things, that the notice "in such cases shall be posted at three public places *in the neighborhood of the justice*, and if the place of residence of the defendant is stated in the affidavit for attachment, he (the constable) shall, at the time, *mail one copy of the notice addressed to such defendant*, at such place of residence; and on or before that day he shall return the notice delivered to him by the justice, with an endorsement thereon, stating the time when, and the places where, he posted *and mailed* copies, as herein required."

(The italics are our own.)

11 The defendant company informed Tourville of the fact that suit had been brought against him by attachment in East

St. Louis, and that it had been garnished in said suit, and requested him to appear and defend the suit, but he failed to do so. Judgment by default was rendered against Tourville in East St. Louis, and thereupon the plaintiff in that suit (Flannigan) proceeded there against the defendant as garnishee. The defendant answered, setting up in its answer that it was not subject to garnishment, because the debt it owed to Tourville was contracted in the State of Missouri and payable there, and, further, that it was exempt by the laws of the State of Missouri from attachment, because Tourville was the head of a family and the amount attached consisted of wages for the last thirty days. The defendant also claimed that the debt was exempt from attachment by the laws of the State of Illinois. The justice allowed the Illinois exemption, which amounted to $50, but denied the Missouri exemption and rendered judgment against the defendant company for the residue of the claim. From this judgment the defendant company appealed to the city court of East St. Louis, where the judgment was affirmed, and the defendant company prosecuted no further appeal.

It was decided by the supreme court of the State of Illinois, in Wabash Railroad Company *vs.* Dougan, 124 Ill., 248, that the defendant company, under the circumstances above stated, was subject to garnishment, and that it could not in such garnishment proceedings claim for one of its employés an exemption from attachment provided for by him by the State where he resides, but that it could claim for him the exemption from attachment provided by the laws of the State of Illinois. It results that the judgment rendered against the defendant company as garnishee of Tourville by the city court of East St. Louis was a valid judgment, according to the laws of the State where rendered, and is a full protection to the defendant company, provided the judgment against Tourville in East St.
Louis was obtained on services provided by the laws of the
12 State of Illinois. The plaintiff concedes this, but maintains
that the judgment rendered against him by the justice was void for want of jurisdiction, and, being the foundation of the entire garnishment proceeding, the latter proceeding was likewise void. This contention is based upon the provisions of sec. 53, *supra*, which we have placed in italics, and is, in brief, that the constable's return of service fails to show that two of the notes posted were posted at public places *in the neighborhood of the justice*, and, furthermore, fails to show that the constable at any time *mailed a copy of the notice to him, Tourville, at the place of his residence*, although such place of residence was stated in the affidavit for attachment.

A garnishee must, for his own protection, see that jurisdiction of the defendant has been properly acquired by the court. Drake on Attachment, sec. 695; McCloon *vs.* Beattie, garnishee, 46 Mo., 391; Eppstein *vs.* Salorgne, 6 Mo. App., 352. Under the decisions of the courts in the State of Illinois, as well as under the decisions of this State, constructive service can confer no jurisdiction unless the requirements of the statute are strictly complied with. The case of Thormeyer *vs.* Sisson, 83 Ill., 188, is directly in point. Had the defendant company shown, when it was proceeded against on the

judgment against Tourville, that such judgment was obtained in disregard of the mandates of the statute, and hence without jurisdiction, no valid judgment could have been rendered against it. The facts showing want of jurisdiction appeared by the papers on file in the justice's office, and it was, under all the decisions, the duty of the defendant company to ascertain whether the court had jurisdiction of Tourville. The defendant company, however, failed to make that defense in its answer.

It is contended here that the plaintiff should be held estopped from questioning the validity of that judgment, because he was personally informed by the defendant company that a suit was pending against him in the city of East St. Louis, and on what day such suit was set for trial. That argument is inadmissable because jurisdiction cannot be conferred by estoppel. In Evans *vs.*
13 Pierce, 3 Ill., 496, the defendant, who was not properly served, sent a letter to the justice, consenting that judgment might be rendered against him for a certain amount, yet it was held he was not estopped from challenging the validity of the judgment thus rendered. The question in these cases is not whether the defendant knew that an action was pending against him, but whether notice of that fact was brought home to him in the manner provided by statute. The law deals with notice and not with knowledge.

It results from the foregoing that the court erred in holding that the defendant company was entitled to credit for the amount paid by it in the garnishment proceedings. The judgment is reversed and the cause remanded, with directions to the trial court to enter judgment for plaintiff for eighty-one dollars, the amount sued for and admittedly due if we disregard the garnishment proceedings. All the judges concur.

R. E. ROMBAUER.

A true copy of the opinion.

Witness my hand and the seal of the St. Louis court of appeals this 26th day of March, A. D. 1895.

(Signed) [SEAL.] JNO. LEWIS, *Clerk.*

In the St. Louis Court of Appeals, March Term, 1895.

TUESDAY, *March 26th*, 1895.

PETER TOURVILLE, Plaintiff in Error and Respondent, *vs.* THE WABASH RAILROAD COMPANY, Defendant in Error and Appellant.	(5485 & 5764.) Error and Appeal from Circuit Court, City of St. Louis.

Now again come the parties aforesaid, by their respective attorneys, and the court, being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment rendered herein by the said circuit court, city of St. Louis, be reversed, annulled, and for naught held and esteemed; that the
14 said plaintiff in error and respondent be restored to all things which he has lost by reason of the said judgment; that the said

cause be remanded to the aforesaid circuit court, city of St. Louis, with directions "to enter judgment for plaintiff for eighty-one dollars, the amount sued for," in conformity with the opinion of this court, herein delivered, and that the said plaintiff in error and respondent recover of the said defendant in error and appellant his costs and charges herein expended and have execution therefor. Opinion filed.

STATE OF MISSOURI, *ss*:

I, John Lewis, clerk of the St. Louis court of appeals, certify that the above and foregoing is a full, true, and complete copy of the judgment rendered in the above-entitled cause as fully as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis,
[SEAL.] this second day of April, A. D. eighteen hundred and ninety-five.

(Signed) JNO. LEWIS, *Clerk.*

On the 3d day of May, 1895, the following further proceedings were had in said cause before his honor James E. Withrow, circuit judge of the circuit court of the city of St. Louis, Mo.

The defendant offered the following testimony:

First. The affidavit of Alexander Flannigan, hereto attached, in the case of Alexander Flannigan *vs.* Peter Tourville, instituted in the city of East St. Louis, Ill., on the 1st day of April, 1895.

Second. The attachment bond in the case of Alexander Flannigan *vs.* Peter Tourville, instituted in the city of East St. Louis, Ill., on the 1st day of April, 1895, before James H. Wyatt, justice of the peace, in said city.

Third. The writ of attachment in said cause, with the service thereon, upon the defendant as garnishee.

15 STATE OF ILLINOIS, } *ss*:
St. Clair County, }

Alex. Flannigan, being duly sworn, says that he has a just demand against Peter Tourville on account of a note, and the affiant believes he is entitled to recover of said Peter Tourville, after allowing all just credits and set-offs, one hundred and thirty-nine dollars and forty cents, which is now due, and that he has good reason to believe, and does believe, that the said Peter Tourville is not a resident of the State, and that upon diligent inquiry he has been unable to ascertain his exact place of residence.

(Signed) ALEX. FLANNIGAN.

Subscribed and sworn to before me this 1st day of April, 1895.

JAMES H. WYATT, *J. P.*

Know all men by these presents that we, A. Flannigan and Dora Flannigan, are held and firmly bound unto Peter Tourville in the penal sum of two hundred and fifty dollars.

The condition of the above obligation is such that whereas the above-bounden A. Flannigan hath, on the day of the date hereof, prayed an attachment at the suit of A. Flannigan against the personal estate of the above-named Peter Tourville for the sum of $139.00, and the same being about to be sued out, returnable on the 26th day of April, before James H. Wyatt, justice of the peace:

Now, if the said A. Flannigan shall prosecute his suit with effect, or, in case of failure therein, shall well and truly pay and satisfy the said Peter Tourville all such cost in such suit and such damages as the said Peter Tourville may sustain by reason of wrongfully suing out said attachment, then the above obligation to be null and void; otherwise to remain in full force and effect.

(S'g'd) ALEX. FLANNIGAN. [SEAL.]
DORA FLANNIGAN. [SEAL.]

This 1st day of April, A. D. 1895.

JAS. H. WYATT, *J. P.*

16 STATE OF ILLINOIS, } ss:
St. Clair County, }

The People of the State of Illinois to any constable of said county, Greeting:

Whereas Alex. Flannigan hath complained that Peter Tourville is justly indebted to the said Alex. Flannigan in the sum of $139.40, and the said Peter Tourville is not a resident of the State, and that upon diligent inquiry he has been unable to ascertain his exact place of residence, and the said Alex. Flannigan having given bond and security according to law:

We therefore command you that you attach so much of the personal estate of the said Peter Tourville to be found in your county as shall be of value sufficient to satisfy the said debt and costs, and such personal estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereon, according to law, before the undersigned justice of the peace, and that you summons the said Peter Tourville to appear before me, at my office, in East St. Louis, in said county, on the 27th day of April next, A. D. 1895, at 2 o'clock p. m., and that you also summon as garnishee all persons who the plaintiff or his agents shall direct, to appear before me at the same time and place, and then and there to answer what may be objected against him or them, when and where you shall make known how you have executed this writ; and have you then and there this writ.

Giuen under my hand and seal this 1st day of April, A. D. 1895.

(S'g'd) JAMES H. WYATT, *J. P.* [SEAL.]

(On the back of this writ appeared the following :)

Writ of Attachment.

ALEX. FLANNIGAN
—
PETER TOURVILLE. } No. —.

Sum demanded..... $139.40
Costs..... 7.50

Executed by summoning the Wabash R. R. Company as garnishee by delivering a true copy hereof to T. H. Anderson,
17 agent of said company, and paying him $1.10 as garnishee fee; no superior officer of said company found in my county; the defendant not found in my county. This 1st day of April, 1895.

(Signed) B. T. BLYTHE, *Constable.*

Fee, $1.20.

It was admitted by counsel for plaintiff, Virgil Rule, Esq., and counsel for defendant, George S. Grover, Esq., that James H. Wyatt, justice of the peace in the city of East St. Louis, Illinois, would, if present, testify that the papers above described and offered in evidence, as aforesaid, by defendant were correct transcripts of the originals now on file in his office, and that said transcripts might be offered in said cause with like effect as if the original- themselves were produced and subject to the same objections. The plaintiff's counsel, Virgil Rule, Esq., objected to the introduction of the above-described papers; which objection was sustained by the court; to which ruling of the court defendant, by its said counsel, duly excepted and saved its exceptions.

And it was further admitted by said counsel that the defendant never owed plaintiff any other debt than the $81 that is now sought to be impounded by the proceedings in the case of Alexander Flannigan, plaintiff, *vs.* Peter Tourville, defendant, and The Wabash Railroad Company, garnishee, instituted in the city of East St. Louis, Illinois, April 1st, 1895, above referred to, and that it is the same debt that was impounded in the proceedings in the case *between the same parties, begun in the same court,* in East St. Louis, on June 3d, 1891, as set forth above.

Judgment.

Said court, sitting as a jury, as aforesaid, then entered judgment in said cause in favor of the plaintiff for the sum of $81, in accordance with the mandate of the St. Louis court of appeals above referred to; — which action of the court the defendant, by its counsel, then and there duly excepted and saved its exceptions.

18 *Motion for New Trial.*

On the 3d day of May, 1895, within four days after the entry of said judgment, the defendant filed its motion for new trial as follows, to wit:

In the Circuit Court of the City of St. Louis, Missouri, April Term, A. D. 1895.

PETER TOURVILLE, Plaintiff,
vs.
WABASH RAILROAD COMPANY, Defendant.

Now comes the defendant in the above-entitled cause and prays the court to set aside the judgment therein entered in said cause on the 3d day of May, 1895, and grant said defendant a new trial for the following reasons, to wit:

First. Because said judgment is against the law.

Second. Because said judgment is for the wrong party.

Third. Because the court excluded proper, competent, material, and relevant testimony in the cause offered by the defendant to the effect that subsequent to the reversal of this cause in the St. Louis court of appeals and prior to the entry of the judgment by this court an attachment proceeding was commenced in a court of competent jurisdiction in the State of Illinois against the defendant in this cause as garnishee, wherein and whereby all debts due to the plaintiff by the defendant were attached in said court, and that said cause is still pending and undetermined in the courts of Illinois.

Fourth. Because this court has by excluding said testimony and by entering the judgment in this cause refused to give full faith and credit to a valid proceeding instituted against the defendant in a sister State.

Fifth. Because the result of the judgment entered by this court in this case will be to compel the defendant to pay the sum therein adjudged to plaintiff, and also to compel the defendant to pay a like sum on a judgment rendered in Illinois in the plaintiff's favor for the same amount.

19 Sixth. Because the result of the court's action in this case will be to compel defendant to pay the same debt to plaintiff twice, once in Illinois and once in Missouri.

Seventh. Because the ruling and order of the court in this cause is in violation of section 1 *or* article 4 of the Constitution of the United States.

Eighth. Because the court refuses to indulge in the presumption that the proceeding in Illinois was valid and refused to give any faith or credit thereto.

Ninth. Because upon the whole record the judgment of this court is erroneous.

(Signed) GEORGE S. GROVER,
Attorney for Defendant.

The court, on the 10th day of June, A. D. 1895, overruled said motion; to which ruling, order, and action of the court the defendant, by its counsel, then and there duly excepted and saved its exceptions.

The defendant thereupon, on the 22d day of June, 1895, presented to Hon. James E. Withrow, circuit judge, as aforesaid, its bill of exceptions in said cause and prayed that the same might be signed, sealed, and made a part of the record, which was done by said judge on said day.

Be it further remembered that on the 25th day of June, 1895, the defendant filed its motion to modify said judgment as follows, to wit:

And on the 5th day of July, 1895, filed the following transcript as an exhibit (A) to said motion as follows:

"In the Circuit Court of the City of St. Louis, Mo., June Term, A. D. 1895.

PETER TOURVILLE, Plaintiff,
vs.
WABASH RAILROAD COMPANY, Defendant. } No. 85743.

Now comes the defendant in the above-entitled cause and states that prior to the rendition of any final judgment in this cause, to wit, on the 1st day of April, 1895, a garnishment proceeding was served upon it in a cause entitled Alexander Flannigan *vs.* Peter Tourville, defendant; Wabash Railroad Company, garnishee, then pending before James H. Wyatt, justice of the peace, in the city of East St. Louis, in the county of St. Clair and State of Illinois.

That in due time this defendant filed its answer in said cause, pleading the exemptions alleged to be due to Peter Tourville in the State of Illinois.

That thereafter, to wit, on the 14th day of June, 1895, said cause came on for trial before said justice in said city, county, and State, wherein it was judicially determined that said Peter Tourville was not a resident of said State of Illinois, and that upon diligent inquiry his exact place of residence was not located; whereupon said justice did on said 14th day of June, 1895, render judgment against this defendant as garnishee in said proceeding for the sum of $81 and costs.

Defendant says that the proceeding in East St. Louis hereinbefore recited was prior in point of time as well as prior in right to the subsequent judgment in favor of Peter Tourville entered by this honorable court on the 3d day of May, 1895, in this, to wit, that the Illinois proceeding was commenced against this defendant long prior to the entry of said judgment by this honorable court.

Wherefore defendant prays this honorable court to modify its said judgment and to deduct therefrom the judgment rendered against this defendant as garnishee, in the city of East St. Louis,

county of St. Clair, and State of Illinois, as hereinbefore set forth, and for other and proper relief.

Defendant further states that unless the judgment of this court is so modified that defendant will be compelled to pay said sum of $81 in East St. Louis, Illinois, and also in the State of Missouri, when the undisputed fact is, and has always been, in this proceeding that the sum of $81, and that sum only, is due to said Peter Tourville by this defendant.

(Signed) GEO. S. GROVER,
Attorney for Defendant."

21 Be it remembered that the following is a true copy of the affidavit of attachment in the following cause, to wit:

Writ.

STATE OF ILLINOIS, } ss:
St. Clair County, }

Alex. Flannigan, being duly sworn, says that he has a just demand against Peter Tourville on account of a note, and the affiant believes that he is entitled to recover of said Peter Tourville, after allowing all just credits and set-offs, one hundred thirty-nine dollars and forty cents, which is now due, and that he has good reason to believe and does believe that the said Peter Tourville is not a resident of the State of Illinois, and upon diligent inquiry he has been unable to ascertain his exact place of residence.

ALEX. FLANNIGAN.

Subscribed and sworn to before me this 1st day of April, A. D. 1895.

JAMES H. WYATT, *J. P.*

Filed June 21st, 1895, at 11.45 a. m.

THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the attachment bond in the following cause, to wit:

Bond.

Know all men by these presents that we, Alex. Flannigan and Dora Flannigan, are held and firmly bound unto Peter Tourville in the penal sum of two hundred fifty dollars.

The condition of the above obligation is such that whereas the above-bounden Alex. Flannigan hath, on the day of the date hereof, prayed an attachment at the suit of Alex. Flannigan against the personal estate of the above-named Peter Tourville for the sum of $139.40, and the same being about to be sued out, returnable on the 27th day of April, before James H. Wyatt, justice of the peace:

22 Now, if the said Alex. Flannigan shall prosecute his suit with effect, or in case of failure therein shall well and truly pay and satisfy the said Peter Tourville all such costs in such

suit and such damages as the said Peter Tourville may sustain by reason of wrongfully suing out said attachment, then the above obligation to be null and void; otherwise to remain in full force and effect.

ALEX. FLANNIGAN. [SEAL.]
DORA FLANNIGAN. [SEAL.]

This 1st day of April, A. D. 1895.

JAMES H. WYATT, *J. P.*

Filed June 21st, 1895, at 11.45 a. m.

THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the writ of attachment in the following cause, to wit:

Summons.

STATE OF ILLINOIS, } ss:
St. Clair County, }

The People of the State of Illinois to any constable of said county, Greeting:

Whereas Alex. Flannigan hath complained that Peter Tourville is justly indebted to the said Alex. Flannigan in the sum of $139.40, and the said Peter Tourville is not a resident of the State of Illinois, and that upon diligent inquiry he has been unable to ascertain his exact place of residence, and the said Alex. Flannigan having given bond and security according to law:

We, therefore, command you that you attach so much of the personal estate of the said Peter Tourville, to be found in your county, as shall be of value sufficient to satisfy the said debt and costs, and such personal estate so attached in your hands to secure or so to provide that the same may be liable to further proceedings thereon, according to law, before the undersigned justice of the peace, and that you summons the said Peter Tourville to appear before
23 me at my office, in East St. Louis, in said county, on the 27th day of April next, A. D. 1895, at 2 o'clock p. m., and that you also summon as garnishees all persons who the plaintiff or his agent shall direct to appear before me at the same time and place, and then and there to answer what may be objected against him or them, when and where you shall make known how you have executed this writ, and have you then and there this writ.

Given under my hand and seal this 1st day of April, A. D. 1895.

JAMES H. WYATT, *J. P.* [SEAL.]

On the back of which writ appears the following endorsement:

Service.

Executed by summoning the Wabash R. R. Company, as garnishee, by delivering a true copy hereof to T. W. Anderson, agent of said

company, and paying him $1.10 as garnishee fee. No superior officer of said company found in my county; the defendant not found in my county. This 1st day of April, 1895.

B. T. BLYTHE, *Constable.*

Filed June 21st, 1895, at 11.45 a. m.

THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the attachment notice in the following cause, to wit:

Notice.

STATE OF ILLINOIS, } ss:
St. Clair County, }

In Justice's Court, before James H. Wyatt, J. P.

ALEX. FLANNIGAN } Demand, $139.40.
vs.
PETER TOURVILLE. }

To the above-named defendant:

You are hereby notified that an attachment has been issued by the undersigned justice of the peace of St. Clair, in and
24 for said county, at the instance of the said plaintiff, against your personal property; that the said attachment was issued for the sum of one hundred thirty-nine and $\frac{40}{100}$ dollars, which amount the plaintiff claims to be due to him from you; that the cause will be tried before me, at my office, in East St. Louis, on the 15th day of May, A. D. 1895, at 2 o'clock p. m., and that unless you shall appear at the time and place fixed for trial, judgment will be entered by default and the property attached ordered to be sold to satisfy the same.

Witness my hand this 29th day of May, A. D. 1895.

JAMES H. WYATT, *J. P.*

On the back of which notice appears the following endorsement, to wit:

Posting.

Executed the within notice by posting one notice at M. Joyce's store, and one notice at the Workingmen's bank, and one notice at the justice's office, the same being three public places in the neighborhood of the justice's office, and by mailing one notice to the defendant, Peter Tourville, at St. Louis, Missouri, his last known place of residence.

Dated this 29th day of May, 1895.

B. T. BLYTHE, *Constable.*

Fees, $1.00.

3—250

Filed June 21st, 1895, at 11.45 o'clock a. m.

THOMAS MAY,
Circuit Clerk.

Be it remembered that the following is a true copy of the note in the following case, to wit:

Note.

$100.00. BELLEVILLE, ILL., *M'ch* 12, 1887.

One day after date I promise to pay to the order of Alexander Flannigan one hundred dollars, at ——, value received, with interest — eight per cent. per annum.

25 P. TOURVILLE.

No. —. Due —— —, ——.

Filed June 21st, 1895, at 11.45 o'clock a. m.

THOMAS MAY, JR.,
Circuit Clerk.

Be it remembered that the following is a true copy of the transcript filed in the following cause, to wit:

Transcript.

STATE OF ILLINOIS, }
St. Clair County. }

In Justice's Court, before James H. Wyatt, J. P.

ALEX. FLANNIGAN }
vs. } Attachment. Demand, $139.40.
PETER TOURVILLE. }

1895, April 1st, affidavit and bond filed; writ issued, returnable on the 27th day of April, 1895, at 2 o'clock p. m., and delivered to Constable B. T. Blythe to execute.

1895, April 1st, writ returned duly executed by summoning the Wabash Railroad Company, as garnishee, by delivering a true copy hereof to T. W. Anderson, agent of said company, and paying him $1.10 as garnishee fee; no superior officer of said company found in my county; the defendant's costs, $10.95; Peter Tourville not found in my county this 1st day of April, 1895. B. T. Blythe, constable. 1895, April 27th, at 3 o'clock p. m., at the time set for trial, said cause was continued for service by publication to the 15th day of May, 1895, at 2 o'clock p. m. 1895, April 29th, notices issued and delivered to Constable B. T. Blythe to execute. 1895, April 29th, notices returned duly executed by posting one notice at M. Joyce's store, and one notice at Workingmen's bank, and one notice at the justice's office, the same being three public places in the neighborhood of the justice, and by mailing one notice to the defendant, Peter Tourville, St. Louis, Missouri, this 29th day of April, 1895. B. T. Blythe, constable.

1895, May 15th, at 3 o'clock p. m., at the time set for trial, plaintiff in court and ready for trial, case called, and the defendant, Peter Tourville, though three times called, came not, default
26 made, evidence heard, and from the evidence adduced the court sustained the attachment, and did adjudge and determine that the plaintiff have and recover of the defendant, Peter Tourville, the sum of one hundred thirty-nine dollars and forty cents and the costs of suit, and said cause was continued as to the garnishee defendant, The Wabash R. R. Company, to the 25th day of May, 1895, at 2 o'clock p. m. 1895, May 25th, at the time set for trial, said cause was continued to the 4th day of June, 1895, at 2 o'clock p. m. 1895, June 11th, the garnishee defendant, The Wabash R. R. Company, filed its answer that the sum of eighty-one dollars and ninety-eight cents was due the defendant, Peter Tourville, and pleading that he was the head of a family, residing with and supporting same. 1895, June 4th, said cause was continued to the 14th day of June, 1895, at 2 o'clock p. m. 1895, June 14th, at 3 o'clock p. m., at the time set for trial, the plaintiff in court, case called, The Wabash R. R. Company, the garnishee defendant, though three times called, came not; thereupon the court did adjudge and determine that the plaintiff have and recover of the garnishee defendant, The Wabash R. R. Company, the sum of eighty-one dollars and ninety-eight cents, with costs, and that the plaintiff have execution therefor.

JAMES H. WYATT, *J. P.* [SEAL.]

STATE OF ILLINOIS, } ss:
St. Clair County, }

I, James H. Wyatt, a justice of the peace in and for said county, do hereby certify that the foregoing transcript of the proceedings had before me in the above-entitled cause is a true and correct copy of the note on file, and of the affidavit and bond, and writ of attachment, and of the notice and of the entries as they appear upon my docket.

Given under my hand and seal this 20th day of June, 1895.

JAMES H. WYATT, *J. P.* [SEAL.]

Filed June 21st, 1895, at 11.45 a. m.

THOMAS MAY, JR.,
27 *Circuit Clerk, St. Clair Co., Ill.*

STATE OF ILLINOIS, } ss:
St. Clair County, }

I, Thomas May, Jr., clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify the foregoing to be a true, perfect, and complete copy of the affidavit of attachment, the attachment bond, the writ of attachment and officer's return, the attachment notice and officer's return, the note, and the justice's transcript, the same being a complete record of all the papers on file of record as they appear in my office, in the case of Alex. Flannigan *vs.* Peter Tourville.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office, in Belleville, this 21st day of June, A. D. 1895.

THOMAS MAY, JR., *Clerk.*

STATE OF ILLINOIS, } ss:
St. Clair County, }

I, A. S. Wilderman, one of the judges of the third judicial circuit of the State of Illinois and presiding judge of the circuit court of said St. Clair county, do hereby certify that Thomas May, Jr., whose name is subscribed to the foregoing certificate of attestation, now is and was at the time of signing and sealing the same clerk of the circuit court of St. Clair county aforesaid (which county is in said judicial circuit) and keeper of the records and seal thereof, duly elected and qualified to office; that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law and by the proper officer.

Given under my hand and seal this 21st day of June, A. D. 1895.

(Signed) A. S. WILDERMAN. [SEAL.]

28 STATE OF ILLINOIS, } ss:
St. Clair County, }

I, Thomas May, Jr., clerk of the circuit court in and for said county, in the State aforesaid, do hereby certify that A. S. Wilderman, whose genuine signature is appended to the foregoing certificate, was at the time of signing the same one of the judges of the third judicial circuit of the State of Illinois (of which judicial circuit the said St. Clair county forms a part), duly commissioned and qualified; that full faith and credit are and of right ought to be given to all his official acts as such in all courts of record and elsewhere.

In testimony whereof I have hereunto set my hand and [SEAL.] affixed the seal of said court, at my office, in Belleville, this 21st day of June, A. D. 1895.

THOMAS MAY, JR., *Clerk.*

And on the 12th day of October, 1895, defendant filed the following motion to recall and quash an execution in said cause as follows, to wit:

Motion to Quash Execution.

In the Circuit Court of the City of St. Louis, Mo.

Room No. 3.

PETER TOURVILLE, Plaintiff,
vs.
WABASH RAILROAD COMPANY, Defendant.

Now comes the defendant in the above-entitled cause, by its attorneys, and states to this court that on or about the 3d day of May,

1895, a judgment was rendered therein by this honorable court in favor of the plaintiff for the sum of eighty-one dollars ($81).

That on the same day, to wit, on the 3d day of May, 1895, the defendant filed its motion for new trial in said cause.

That on the 4th day of June, 1895, defendant filed its brief in support of said motion.

29 That on the 10th day of June, 1895, said motion for new trial was overruled.

That on the 22nd day of June, 1895, within the time allowed by this honorable court for this purpose, defendant filed its bill of exceptions in said cause, excepting to said judgment and all rulings afterwards made as well as the overruling of said motion for new trial by this honorable court; which said bill of exceptions was on said day signed, sealed, and made a part of the record in said cause by this court and filed in this cause by defendant.

That on the 24th day of June, 1895, defendant filed its motion to modify said judgment.

That on the 5th day of July, 1895, defendant filed, as a part of said motion to modify said judgment, a transcript from a court of competent jurisdiction in the State of Illinois, showing that a judgment had been rendered against it as garnishee in said cause, in a cause commenced in said courts of said State prior to the rendition of judgment in this cause—that is to say, prior to May 3d, 1895—wherein in said courts of Illinois defendant, as said garnishee, was adjudged and required to pay the sum of $81 due from it to said Tourville, it being the same $81 now in controversy in this cause.

That on the 5th day of July, 1895, plaintiff filed a motion in this cause to strike defendant's bill of exceptions from the file.

That on the 11th day of October, 1895, plaintiff caused an execution to be issued against the defendant for the amount of said judgment so rendered, as aforesaid, on the 3d day of May, 1895, for the sum of $81 and for interest and cost thereon, amounting in all to the sum of $114.40, as will more fully appear by an itemized statement thereof served upon defendant by the sheriff of the city of St. Louis; which said statement is hereto attached to this motion, made a part thereof, and marked Exhibit "A."

Defendant says that its said motion to modify judgment in this cause in this court has not been passed upon by this honor-
30 able court, nor has plaintiff's motion to strike its bill of exceptions from the files in said cause been passed upon by this honorable court, but that said motions were and are still under advisement by this honorable court.

Wherefore defendant prays this court to recall and quash the execution described in this motion and modify its judgment therein by crediting said judgment with the amount paid by defendant, as shown by the transcript now on file in this court, in the courts of Illinois, in a garnishment proceeding had in a court of competent jurisdiction in that State, whereby the only sum the defendant now owes, or ever did owe, to the plaintiff in this cause, to wit, Peter Tourville, has been paid to him or for his use into the courts of Illinois to satisfy a just debt long since due in said State to a cred-

itor of said Peter Tourville, and defendant prays for all proper relief in the premises.

(Signed) GEO. S. GROVER,
Attorney for Defendant.

Execution.

Bring this notice with you.

To the December Term, 1895, of the Circuit Court, City of St. Louis, Wabash Railroad Company *et al.:*

OFFICE SHERIFF OF THE CITY OF ST. LOUIS.

PETER TOURVILLE
vs.
WABASH RAILROAD COMPANY and W. NICHOLS and J. H. MAXON, Securities. } Execution No. 6.

You are hereby notified to call at the sheriff's office without delay and pay above-styled execution against you and your securities.

By so doing you will save additional costs.

HENRY TROLL,
Sheriff of the City of St. Louis,
By JOS. GREUNEWALD, *Deputy.*

31 ST. LOUIS, *October* 11*th*, 1895.

Judgment	$81.00
Interest	2.15
Court costs on face of execution	28.45
Service and commission	2.80
Total	$114.40

EXHIBIT "A."

Notice.

ST. LOUIS, MO., *October* 11*th*, 1895.

Captain Henry Troll, sheriff of the city of St. Louis.

DEAR SIR: Please take notice that the defendant in the case of Peter Tourville, plaintiff, *vs.* Wabash Railroad Company, defendant, will, on or about the 11th of October, 1895, file before his honor James E. Withrow, circuit judge of the city of St. Louis, its motion to quash and recall a certain execution issued in said cause on or about the 11th day of October, 1895, in favor of the plaintiff therein.

You are hereby notified to take no further action in the premises until said motion is determined and to act therein in all things at your peril.

THE WABASH RAILROAD COMPANY,
By GEO. S. GROVER,
Its Attorney of Record in this Cause.

Notice.

ST. LOUIS, MO., *October 11th*, 1895.

Virgil Rule, Esq., attorney, city.

DEAR SIR: Please take notice that the defendant will, not later than October 12th, 1895, file its motion before Hon. Jas. E. Withrow, circuit judge, in court room No. 3, in the city of St. Louis, Mo., its motion to quash and recall the execution issued or caused to be issued by the plaintiff in the case of Peter Tourville, plaintiff, *vs.*
Wabash Railroad Company, defendant, for the reason that
32 the same was improvidently granted, and for the further reason that all sums due or ever due to said Tourville by defendant have been paid over for his use in a proper proceeding in the courts of Illinois.

THE WABASH RAILROAD COMPANY,
By GEO. S. GROVER, *Its Attorney.*

Motions Overruled.

Thereafter the court took said motions and each of them so filed by defendant, as aforesaid, under advisement, and on the 4th day of December, 1895, at the October term of said court, overruled the same; to which ruling and order of the court the defendant at the time, by its counsel, then and there duly excepted, and saved its exceptions.

Appeal Perfected.

On the 7th day of December, 1895, defendant filed its affidavit for appeal, and an appeal to this court was allowed to defendant by the circuit court of the city of St. Louis, Mo.

Bond Filed and Approved.

On the 13th day of December, 1895, defendant filed its appeal bond in this cause; which said bond was approved by the court below.

Bill of Exceptions Signed and Filed.

On the 28th day of December, 1895, within the time allowed by the court for that purpose, by an order duly entered of record in said cause, the defendant's bill of exceptions was signed, sealed, filed, and made a part of the record in said cause by the circuit court of the city of St. Louis, Mo., and thereupon defendant duly perfected its appeal in said cause to this court.

GEO. S. GROVER,
Attorney for Appellant.

And afterwards, to wit, on the 23rd day of October, 1897, the following proceedings were had in division No. 1 of this court in said cause, viz:

33 PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant.

Come now the said parties, by attorneys, and submit this cause to the court on briefs, and upon stipulation it is ordered by the court that the said parties be granted 30 days in which to file briefs.

Which said stipulation is in words and figures as follows, viz:

Supreme Court, State of Missouri, Div. 1, October Term, 1897.

PETER TOURVILLE, Respondent,
vs.
WABASH RAILROAD CO., Appellant. } No. —.

It is hereby stipulated and agreed betwe-n the parties to the above-entitled cause that the same may be taken as submitted and the parties hereto be allowed thirty days in which to file briefs.

VIRGIL RULE,
Attorney for Respondent.
GEO. S. GROVER,
Attorney for Appellant.

And afterwards, to wit, on the 29th day of January, 1898, the further following proceedings were had in division No. 1 in said cause, viz:

PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant.

Now, at this day, upon the court's own motion, it is ordered that this cause be transferred to the court in banc, and set for hearing on the 12th day of April, 1898.

And afterwards, to wit, on the 12th day of April, 1897, the following proceedings were had in court in banc in said cause, viz:

34 PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant.

Come now the said parties, by attorneys, — after argument herein submit these causes to the court.

And afterwards, to wit, on the 21st day of February, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant. } Appeal from Circuit Court, City of St. Louis.

Now, at this day, come again the parties aforesaid, by their respective attorneys, and the court here, being now sufficiently advised of and concerning the premises, doth consider and adjudge

that the judgment aforesaid, in form aforesaid by the said circuit court of the city of St. Louis rendered, be in all things affirmed and stand in full force and effect, and that the said respondent recover against the said appellant his costs and charges herein expended, and have therefor execution; opinion filed.

Which said opinion is in words and figures as follows, viz:

In the Supreme Court of Missouri, October Term, 1898. In Banc.

PETER TOURVILLE, Respondent,
vs.
WABASH RAILROAD CO., Appellant. } 7985.

Opinion.

The defendant is a consolidated railway corporation, separately organized under the laws of Michigan, Ohio, Indiana, Illinois, and Missouri, having business offices and agents in all of these States.

On the 3rd of June, 1891, the plaintiff Tourville, a resident of the State of Missouri, being indebted on a promissory note to one Flannigan, a resident of the State of Illinois, the said Flannigan instituted a suit against him by attachment for the recovery
35 of such debt before a justice of the peace in that State, in which, on the same day, the defendant railroad Co. was served with notice of garnishment in that State under the laws thereof. Afterwards, on the 10th of June, 1891, the plaintiff instituted this suit against the defendant railroad company, before a justice of the peace in the city of St. Louis, to recover the sum of $81.98 on account of wages due him, not subject to execution, attachment, or garnishment under the laws of Missouri. The defendant made default, and judgment was rendered against it in the justice's court, and thereupon the defendant took an appeal to the St. Louis city circuit court. In the meantime the attachment suit in Illinois having proceeded to judgment on the 25th of July, 1891, in the justice's court, against the railroad Co., for the sum of $21.80 and costs, on its answer admitting its indebtedness to Tourville on account of the wages aforesaid in the sum of $71.83, but pleading the exemption of the sum from garnishment under the laws of Illinois and Missouri, and that judgment having been affirmed on defendant's appeal by the city court of East St. Louis, in that State, on the 21st of Dec., 1891, and the railroad company having paid that judgment, amounting to the sum of $43.38, on the 6th of Jan., 1892, when this case came on for trial in the St. Louis circuit court on the 23rd of January, 1892, this defendant railroad company interposed that judgment as a defense in part to plaintiff's action, and the circuit court allowed the same as a credit on plaintiff's demand, and rendered judgment in his favor against the defendant for the sum of $38.60, the balance of the amount sued for. From this judgment both parties appealed to the St. Louis court of appeals, where, on the 26th of March, 1895, the judgment was reversed "and the cause remanded with directions to the trial court to enter judgment for plaintiff for $81, the amount sued for." 61 Mo. App., 527.

Afterwards, on the first of April, 1895, and before the mandate of the court of appeals reached the circuit court, Flannigan instituted another suit by attachment against the plaintiff, before a
36 justice of the peace in the State of Illinois, to recover the balance due on his debt, in which, on the same day, the defendant was served with notice of garnishment. The writ in this proceeding was returnable April 27th, 1895, and while the same was pending in Illinois the mandate of the St. Louis court of appeals in this case reached the St. Louis city circuit court, and on the 3rd day of May, 1895, the defendant offered to said court, as evidence in the case, the affidavit, attachment, bond, and writ, with the service thereon upon the defendant as garnishee, in the said second attachment suit so instituted by the said Flannigan against the plaintiff on the first day of April, 1895, in the State of Illinois. To the admission of this evidence the plaintiff objected. His objection was sustained. The defendant excepted, and thereupon the court entered judgment in his favor against the defendant for the said sum of $81, in pursuance of the mandate of the St. Louis court of appeals. The defendant again excepted, and on the same day filed its motion to set aside the judgment and for new trial on the ground that by entering said judgment and rejecting said evidence the court refused to give full faith and credit to a valid proceeding instituted against the defendant in a sister State, in violation of section 1, art. 4, of the Constitution of the United States; which motion was overruled on the 10th day of June, 1895, and the defendant excepted. On the 25th of June, 1895, defendant filed its motion to modify the judgment, and in support of said motion and as a part thereof on the 5th day of July, 1895, filed a transcript and copy of the proceedings in the second attachment suit in Illinois, showing judgment therein against Tourville in favor of Flannigan for $139.30 on the 15th of May, 1895, and judgment in his favor against the railroad company as garnishee for $81.98 on the 14th of June, 1895, and by reason thereof the defendant in its motion asked that the judgment in this case be modified by deducting therefrom the amount of said Illinois judgment. On the 5th of July, 1895, plaintiff filed a motion to strike the defendant's bill of exceptions from the files, and on the 11th day of October, 1895, caused
37 execution to be issued upon the judgment. On the 12th of October, 1895, the defendant filed its motion to quash said execution, assigning the same reasons therefor as in its former motions, and on the 4th of Dec., 1895, the court overruled defendant's motion to modify the judgment and quash the execution; to which action of the court defendant excepted, and thereafter in due time perfected its appeal.

1. In order to convict the circuit court of error much reliance is placed by counsel for defendant upon the case of Hardware & Manufacturing Co. *v.* Lang & Co., 127 Mo., 242, followed in Howland *v.* C., R. I. & P. R'y Co., 134 Mo., in which it was held "that debts have no *situs*, but may be attached in any State other than that in which the debtor is a resident," or, in the language of the *syllabus* of the first case, "Wherever a creditor may maintain a suit to re-

cover his debt it may be attached there as his property, provided the laws of such place authorize it;" while for the plaintiff it is urged that the doctrine of these cases is against the weight of authority and should be overruled. In the view we take of the facts of this case, however, we do not find it necessary to enter into this discussion, and refrain from doing so for the reason that anything therein said might be considered *obiter* the case in hand. Nevertheless, it may be well to note in this connection that the defendant in this case has a separate and independent corporate existence both in this State and in the State of Illinois. "Railroad corporations created by two *no* more States, though joined in their interests, in the operation of their roads, in the issue of their stock, and in the division of their profits so as practically to be a single corporation, do not lose their identity, but each has its existence and its standing in the courts of the country only by virtue of the legislation by which it was created, and the union of name, of officers, of business, and of property, does not change their distinctive character as separate corporations." Nash*au* Railroad *v.* Lowell Railroad, 136 U. S., 356. So that in the defendant we have
38 two legal entities, one a corporation and citizen of Illinois, the other a corporation and citizen of Missouri. With the former the plaintiff had no dealings and it owed him nothing. The latter became indebted to him in the sum of $81 for wages earned in Missouri, and under the law thereof exempt from attachment, execution, and garnishment, and while it may be difficult to see how this debt due the plaintiff from the Wabash Railroad Company of Missouri could be impounded in the courts of Illinois by the service of garnishment process on the Wabash Railroad Company of Illinois, the ruling of the court of appeals was not based upon the ground that it was not so subject. On the contrary, that court, conceding the fact that the debt was subject to garnishment in the courts of Illinois, held that the laws of that State authorizing the proceeding had not been complied with, and the judgment by reason thereof was void, thus giving that proceeding all the faith and credit it was entitled to in the courts of this State, as was the measure of its duty under the Constitution of the United States; but whether it did so or not, its action in that behalf could not be questioned or reviewed by the circuit court, which brings us to the actual case in hand.

2. The circuit court committed no error in rejecting the evidence of the proceedings in the second attachment suit in Illinois in rendering judgment for the plaintiff or in refusing to modify that judgment. It is true if the judgment of the circuit court had been simply reversed and the cause remanded the case would have stood as though no judgment had ever been rendered, and the parties would have been entitled "to proceed in the court below to obtain a final determination of their rights in the same manner and to the same extent as if the cause had never been decided by any court." Crispen *v.* Hannoran, 86 Mo., loc. cit. But such was not the case. The cause was remanded to the circuit court with directions "to enter judgment for the plaintiff for $81," and the circuit

court had no judicial discretion in the matter. It had no
39 power to enter any other judgment or to consider or determine other matters not included in the duty of entering the judgment as directed. State *ex rel. v.* Edwards, 144 Mo., 467; Rees *v.* McDaniel, 131 Mo., 681; Young *v.* Thrasher, 123 Mo., 308; Stump *v.* Hornback, 109 Mo., 272; Chouteau *v.* Allen, 74 Mo., 56.

3. The court committed no error in issuing execution on the judgment nor in overruling defendant's motion to quash the same. The judgment of the St. Louis court of appeals rendered on the 26th of March, 1895, was a final judgment in the cause. Young *v.* Thrasher, 123 Mo., 308; 1 Black on Judgments, sec. 34, p. 36, and cases, note 64; Mower *v.* Fletcher, 114 U. S., 127; Smith *v.* Adams, 130 U. S., 167.

The entry of that judgment in the circuit court was a purely ministerial act, carrying into execution the judgment of the appellate court of the date and effect as rendered by that court. One of the effects of that judgment was to merge the cause of action, the debt sued for, in the judgment. "It was drowned in the judgment." It thereby "lost its vitality," and "all its power to sustain rights and enforce liabilities terminated in the judgment." Cooksey *v.* Kansas City, &c., R. R. Co., 74 Mo., 477; 1 Freeman on Judgments, § 215; 2 Black on Judgments, § 674. On the 26th of March, 1895, the old debt of the company to the plaintiff ceased to exist, and thereafter could not sustain any liability imposed thereon by the subsequent garnishment proceedings under the second attachment suit in Illinois. 15 Am. & Eng. Encycl., p. 341. But it is contended that the new debt, the judgment debt which took its place, was subject to garnishment. There has been a difference of opinion as to whether a judgment debtor could be held at all as garnishee of the judgment creditor, even in the court in which the judgment was rendered, the courts in some of the States holding one way and in some of them the other. Drake on Attachment, 7th ed., § 622. This learned author, after giving some of the reasons sustaining the affirmative of the proposition, says, § 625: "However strongly these reasons apply to the case of a garnishment of the judgment debts in the same court in which
40 the judgment was rendered, their force is lost when the judgment is in one court and the garnishment in another. There a new question springs up, growing out of the conflict of jurisdiction which at once takes place. Upon what ground can one court assume to nullify in this indirect manner the judgment of another? Clearly the attempt would be absurd, especially when the two courts were of different jurisdictions or existed under different governments." This was the very absurdity which the circuit court was called upon to perpetrate by the motion to quash the execution and the other motions of defendant in the case. In refusing to do so it committed no error, and the judgment is affirmed.

All concur except Marshall and Valliant, JJ., not sitting.

THEO. BRACE, *J.*

And afterwards, to wit, on the 27th day of February, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
v.
WABASH R'Y CO., App.

Comes now the said appellant, by attorney, and files its motion for a rehearing herein.

Which said motion for rehearing is in words and figures as follows, viz:

PETER TOURVILLE, Respondent,
vs.
WABASH R'Y CO., Appellant.

Motion for Rehearing Filed by Appellant.

Now comes the appellant, The Wabash Railroad Company, in the above-entitled cause, by its attorney, and moves the court here to grant it a rehearing therein for the reason that a question decisive of the case and duly submitted by counsel has been overlooked, to wit, the right of Alexander Flannigan, who never was a
41 party to this record, to appear in the courts of Illinois after having obtained service upon the appellant in that State and assert his title in said court to the amount in controversy and to assert his right in the courts of Missouri as well to share in the sum here in dispute as a creditor of Tourville after the case had been remanded, with directions, in the St. Louis court of appeals and before the mandate of said court had been executed by the circuit court of the city of St. Louis, Missouri.

Second. That the decision of this court in this case is in conflict with a controlling decision of the supreme court of Missouri, to wit, the case of Chouteau *vs.* Allen, 74 Missouri, page 59, cited with approval in the present opinion, to which the attention of the court was not called in the argument of this case through the inadvertence of counsel, in which the principle for which appellant here contends, to wit, that said Flannigan, a stranger to this record, had the right to intervene in the courts of Missouri after the reversal of the judgment and before the mandate was entered and claim the fund in dispute or a part thereof, which right has been denied to him and said decision ignored in the present opinion, thereby refusing to give full faith and credit in the courts of this State to the proceedings of a sister State, as required by the Constitution of the United States.

Respectfully submitted.

GEORGE S. GROVER,
Attorney for Appellant.

STATE OF MISSOURI, } *ss:*
City of St. Louis, }

George S. Grover, of lawful age, being duly sworn, on his oath states that he is the attorney of record for appellant in case of Peter

Tourville *v.* Wabash Railroad Company, now pending on motion for rehearing in the supreme court of Missouri.

Affiant further states that on the 22d day February, 1899, upon receipt of the opinion of the supreme court in said cause, he
42 deposited in the post-office, to be forwarded by United States mail, a notice to Virgil Rule, Esq., attorney of record for respondent in said cause, that a motion for rehearing would be filed by defendant, a true copy of which notice is hereto attached to this affidavit, marked Exhibit "A," and made a part hereof.

And further affiant saith not.

GEO. S. GROVER.

Subscribed and sworn to before me this 22d day of February, 1899.

[SEAL.] B. C. WINSTON,
Notary Public, City of St. Louis, Mo.

Commission expires Nov. 2d, 1901.

ST. LOUIS, *Feb. 22d*, 1899.

Virgil Rule, Esq., Fullerton building, city.

DEAR SIR: Please take notice that I will in due time file a motion for rehearing in the supreme court of Missouri in the following case: Peter Tourville *v.* Wabash Railroad Company. I will have motion printed and serve you with copy as soon as completed.

Respectfully, GEO. S. GROVER.

And afterwards, to wit, on the 14th day of March, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
vs.
WABASH R'Y CO., App.

Now, at this day, the court, having fully considered and understood the motions heretofore filed for rehearings herein, doth order that said motions be, and the same are hereby, denied.

43 And on said 14th day of March, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
vs.
WABASH R'Y CO., App.

Now, at this day, there is presented to the Hon. James B. Gantt, chief justice, a writ of error to the Supreme Court of the United States, and a citation directed to the said respondent, citing and admonishing him to be and appear at a Supreme Court of the United States on the 13th day of April, 1899; which said writ of error is allowed, and said citation signed, ordered filed, and made a part of the record herein.

And afterwards, to wit, on the 16th day of March, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
vs.
WABASH R'Y CO., App.

Now, at this day, comes the said appellant, by attorney, and files its assignment of errors to the Supreme Court of the United States in this cause.

Which said assignments of error are in words and figures as follows, to wit:

In the Supreme Court of Missouri, October Term, 1898.

PETER TOURVILLE, Defendant in Error,
vs.
WABASH RAILROAD COMPANY, Plaintiff in Error.

Assignment of Error.

Now then comes The Wabash Railroad Company, plaintiff in error in the above-entitled cause, by its attorney, and assigns the following as error therein:

1. Because the judgment of the supreme court of Missouri in said cause is against the law.

44 2. Because said judgment should have been in favor of the plaintiff in error instead of the defendant in error.

3. Because, by affirming the judgment of the court below, the supreme court of Missouri has refused to give full faith and credit to a valid proceeding instituted against the plaintiff in error in a sister State.

4. Because the result of the affirmance of the judgment below by the supreme court of Missouri will be to compel the plaintiff in error to pay the sum therein adjudged to defendant in error, and also to compel the plaintiff in error to pay a like sum on a judgment rendered in Illinois in favor of the defendant in error for the same amount.

5. Because the result of the court's action in this case will be to compel plaintiff in error to pay the same debt to defendant in error twice, once in Missouri and once in Illinois.

6. Because the affirmance of the judgment below is in violation of section 1 of article 4 of the Constitution of the United States.

7. Because the supreme court of Missouri refuses to indulge in the presumption that the proceeding in Illinois was valid, and refused to give any faith or credit thereto.

8. Because upon the whole record the judgment of this court is erroneous.

GEO. S. GROVER,
Attorney for Plaintiff in Error.

And afterwards, to wit, on the 20th day of March, 1899, the further following proceedings were had in said cause, viz:

PETER TOURVILLE, Resp.,
vs.
WABASH R'Y CO., App.

Now, at this day, there is presented to Hon. James B. Gantt, in chambers, a supersedeas bond in this cause in the sum of five hundred dollars; which said bond is approved, ordered filed, and made a part of the record herein.

45 Which said bonds is in words and figures as follows, to wit:

Know all men by these presents that we, Wabash Railroad Company, as principal, and W. Nichols, as surety, are held and firmly bound unto Peter Tourville in the full and just sum of five hundred dollars, to be paid to the said Peter Tourville, his heirs, executors, and administrators; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 14th day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at the October term, A. D. 1898, of the supreme court of the State of Missouri, in a suit depending in said court between Peter Tourville, respondent, and Wabash Railroad Company, appellant, judgment was rendered against the said appellant, and the said appellant having obtained a writ of error of the said court to reverse the judgment *the judgment* in the aforesaid suit, and a citation directed to the said Peter Tourville, respondent as aforesaid, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., not exceeding thirty days from and after the date of the citation in said cause:

Now, the condition of the above obligation is such that if the said Wabash Railroad Company shall prosecute said writ to effect and answer all damages and costs if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

THE WABASH RAILROAD COMPANY, [SEAL.]
By J. RAMSEY, JR. [SEAL.]
W. NICHOLS. [SEAL.]

[SEAL.]

Attest: E. A. LLOYD,
Ass't Secretary.

Sealed and delivered in presence of—
—— ——.

Approved by—
JAMES B. GANTT,
Chief Justice.

46 STATE OF MISSOURI, *set:*

I, Jno. R. Green, clerk of the supreme court of the State of Missouri, certify that the foregoing is a full, true, and complete transcript

of the record and proceedings in the case of Peter Tourville *vs.* Wabash Railroad Company as fully and complete as the same appear of record and on file in my said office.

Seal of the Supreme Court of Missouri.

In witness whereof I have hereunto set my hand as clerk and affixed the seal of said court. Done at office, in the city of Jefferson, this 20th day of March, A. D. 1899.

JNO. R. GREEN, *Clerk.*

47 In the Supreme Court of the United States.

WABASH RAILROAD COMPANY, Plaintiff in Error,
vs.
PETER TOURVILLE, Defendant in Error. } No. 765.

Now comes the plaintiff in error in the above-entitled cause and assigns as error therein the following:

First. The first proceedings in East St. Louis in said cause disclosed a substantial compliance with the statutes of Illinois, which is all that is necessary in such cases.

Second. Even if such proceedings were irregular, the judgment was in favor of Peter Tourville, the defendant in error in this cause, and he is therefore estopped from here questioning them.

Third. The payment by plaintiff in error of the first judgment here under consideration is a perfect defense to this action in so far as said judgment diminished the fund in the hands of the stakeholder or garnishee.

Fourth. The legal effect of the appeal to the circuit court of the city of St. Louis from a justice of the peace was to vacate and annul the judgment of the justice of the peace rendered in that city, and the effect of the reversal of the first judgment rendered by the circuit judge in said court was to vacate it also and restore the parties thereto to the same condition in which they were prior to its rendition.

Fifth. In the interval between the reversal of the first judgment in Missouri and the last one here appealed from, or from March 26th, 1895, to May 3rd, 1895, the fund in the hands of the plaintiff in error was duly attached in Illinois on the first day of April, 1895, and therefore that proceeding in Illinois took precedence over the subsequent proceedings in Missouri.

48 And the second judgment in Illinois against the plaintiff in error as garnishee destroyed the right of the defendant in error to recover the same sum from said garnishee, as the Illinois judgment was, under the Constitution and laws of the United States, entitled to full faith and credit in the courts of Missouri.

Sixth. A judgment is always subject to garnishment in any jurisdiction.

Seventh. A void judgment does not bar a subsequent action by the same creditor to recover the same debt from the same debtor.

Eighth. And the first judgment, even if it was valid, not having satisfied the debt, cannot be pleaded in bar by the plaintiff in error to the second attachment proceeding in Illinois.

Ninth. That the circuit court of the city of St. Louis, Missouri, refused to give full faith and credit in the courts of Missouri to the proceedings of a sister State, Illinois, as required by the Constitution of the United States.

Tenth. That the supreme court of Missouri in this action has refused to give full faith and credit in the courts of Missouri to the proceedings of a sister State, Illinois, as required by the Constitution of the United States.

WELLS H. BLODGETT,
GEO. S. GROVER,
Attorneys for Plaintiff in Error.

[Endorsed:] In the Supreme Court of the United States. No. 765. Wabash R. R. Co., pl't'ff in error, *vs.* Peter Tourville, def't in error. Assignment of error.

49 [Endorsed:] File No., 17,350. Supreme Court U. S., October term, 1898. Term No., 765. The Wabash Railroad Co., P. E., *vs.* Peter Tourville. Assignment of errors. Filed Apr. 18, 1899.

Endorsed on cover: File No., 17,350. Missouri supreme court. Term No., 250. The Wabash Railroad Company, plaintiff in error, *vs.* Peter Tourville. Filed April 4th, 1899.